

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री सुधांशु श्रीवास्तव, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI. SUDHANSHU SRIVASTAVA, JM

आयकर अपील सं./ ITA NO. 220/Chd/2021
निर्धारण वर्ष / Assessment Year : 2017-18

M/s Jain Amar Clothing Private Limited 992/1 Pipal Building, Chawal Bazar Ludhiana-141008- Punjab	बनाम	The DCIT-CC-3 BVM School, Kitchlu Nagar Ludhiana-141001-Punjab
स्थायी लेखा सं./PAN NO: AABCJ8065G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri S.C. Jain, C.A
राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 31/03/2022
उद्घोषणा की तारीख/Date of Pronouncement : 19.04.2022

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the Assessee against the order dt. 31/08/2021 of the Ld. CIT(A) -5, Ludhiana.

2. Following grounds have been raised in this appeal:

1. That the expenditure of Rs. 28,66,569/- disallowed by the A.O. u/s 37 and treated as capital expenditure and not considered by the CIT(A) be allowed.
2. That the Ld. CIT(A) has disallowed the expenditure of Rs. 28,66,569/- after considering section 30 & 31 of the Income Tax Act, 1961 and has treated such expenditure as capital expenditure ignoring correct facts, hence the order of the CIT(A) may please be set aside.
3. That the AO has mentioned in the Assessment Order regarding additions to Building and electric fittings. These buildings and electric fittings are self owned by the company and this fact has not been considered by the CIT(A), hence the order of CIT(A) may please be set aside and the disallowance of Rs. 28,66,569/- made by the AO may please be deleted.

4. *The assessee craves to leave, amend, alter or take additional grounds of appeal before or at the time of hearing.*

From the aforesaid grounds it would be clear that the only grievance of the assessee relates to the expenditure of Rs. 28,66,569/- treated by the AO as capital expenditure instead of revenue expenditure as claimed by the assessee.

3. Facts of the case in brief are that the assessee was engaged in manufacturing of readymade garments and trading of accessories for the year under consideration. The return of income was filed on 04/11/2017 declaring an income of Rs. 7,56,92,130/- which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Later on the case was selected for scrutiny.

3.1 During the course of assessment proceedings, the AO noticed that the replies dt. 28/11/2019 and 04/12/2019 furnished revealed that a loss amounting to Rs. 28,66,569/- had been claimed by the assessee on account of fire. According to the Assessing officer, the damage to the building and electrical fittings, was a capital loss and not the revenue loss. He therefore asked the assessee to show cause as to why expenses of loss on account of fire amounting to Rs. 28,66,569/- should not be disallowed under section 37 of the Act.

3.2 In response the assessee filed reply on 21/12/2019 and stated that as per Clause 8 of the lease deed the assessee will be responsible for any wear and tear, maintenance and other repairs of the building. Thus, the loss on account of fire was claimed as revenue loss and not the capital loss. The Assessing officer, however did not accept the submissions of the assessee by observing that the insurance claim form clearly mentioned that the loss was in respect of the building and electrical fittings and that the assessee had made addition of Rs. 43,88,370/- in the building and Rs. 95,36,788/- in the electrical fitting etc. He accordingly treated the impugned expenditure as capital in nature.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the assessee company had taken ground floor of the building at B-24/4707 & 4701/1, Sunder Nagar, on lease from 23/06/2016 at the rental of Rs. 5,000/- per month. In the lease agreement point no. 3 & 8 read as under:

"Point No. 3: It is expressly agreed and understood that the second party shall have no right, title, interest or any claim whatsoever on the premises of the First party, which is exclusively the property of First Party."

"Point No. 8: Second party will be responsible for any wear & tear maintenance, other repairs of the building. If due to calamity or loss occurs on any part of rented premises the same is to be borne by second party."

4.1 It was stated before the Ld. CIT(A) that in the lease agreement it was clearly mentioned that the second party i.e; the assessee would be responsible for any wear and tear or maintenance and other repairs of the building, if any calamity or loss occurs to rented property, the same was to be borne by the assessee company. It was submitted that the expenses were incurred on account of calamity or fire in the adjacent building and the loss on account of building repairs and electrical fittings was a revenue loss and not capital loss. The assessee furnished the written submissions alongwith supporting documents which have been discussed by the Ld. CIT(A) at page no. 3 to 5 of the impugned order and read as under:

1. The learned AO has made the additions of Rs. 2866569/- on account of fire loss expenses debited to profit and loss account during the assessment year 2017-18. The information was called by the AO before making the additions. The assessee company has filed reply on 13.12.2019 against the questionnaire and the following documents were attached with this letter:

- a. Copy of FIR Lodged
- b. Copy of report to Fire brigade department
- c. News Paper cutting
- d. Intimation letter to insurance company
- e. Copy of Insurance policy
- f. Copy of claim form lodged
- g. Surveyor report
- h. Claim finalization letter by insurance company
- i. Copy of account of Repair Building (damaged by fire) along with copies of major bills.

The reply filed with AO is attached for your kind references at paper book page no 8 to 88. The complete documents along with this letter were filed with the AO to prove the contention. The said leased building is in the name of Smt. Sangeeta Jain who has given part of the building to M/s Vrinda International Pvt. Ltd. and part of the building to M/s Jain Amar Clothing Pvt. Ltd. The fire broke out in the premises of M/s Vrinda International Pvt. Ltd. where adjacent part of the building belongs to M/s Jain Amar clothing Pvt. Ltd. being building taken on lease rental. The fire broke out in the premises of the company also and the company had to suffer loss on account of fire in the premises. The company had also insured the building and lodged the claim with the insurance company for the loss occurred. The insurance company after allowing the part of the claim settled the claim. The balance expenses incurred on account of maintenance of building and on account of electrical fittings were debited to Profit and Loss Account and claimed as loss. Your kind attention is invited to the FIR lodged by M/s Vrinda International Pvt. Ltd. which is placed in the paper book at page no. 11 to 12. The copy of fire brigade report is also placed in the paper book at page no 13. Further your kind attention is invited to the newspaper cuttings which were also given to the AO during the proceedings and placed in the paper book from page no. 14 to 19. These newspaper cuttings are published by leading newspaper agencies like Ludhiana Jagran City, Ludhiana Kesari, Bhaskar News and Dainik Sawera Times. The copy of intimation given to Oriental insurance company is also placed in the paper book at page no 20 along with insurance policy which are also placed in the paper book at page no. 21 to 24. The fire insurance claim with quotations is also placed in the paper book at page no. 25 to 32. The copy of Surveyor report is also placed in the paper book at page no. 33 to 43. The claimed finalization letter by Oriental insurance company is also attached which is placed in the paper book at page no. 44 to 46. The copy of account of repair building (damaged by fire along with photocopies of major bills are also attached in the paper book a page no. 47 to 88. All these bills clearly show that the expenditure was incurred by the company due to fire loss. The AO has also accepted that the building was taken on lease and the maintenance of the building was day to day expenses. However, at point no. 8, it is clearly mentioned if due to any calamity or loss occurs on any part of the rented premises, the same is to be borne by the second party i.e. Jain Amar Clothing Pvt. Ltd. The AO has ignored this correct fact. It is definite that this expenditure is revenue expenditure and not capital expenditure as assumed by the AO in his assessment order. It is requested and prayed to delete the additions wrongly made under the wrong notion of law.

2. The second ground of appeal is that the AO has mentioned in Para 4.2 of the assessment order regarding additions of Rs. 4388370/- in the building account and Rs. 9536788/- in the electrical fittings account. Please note that these figures relates to assessment year 2016-17 and not to the assessment year 2017-18. Further correct figure is Rs. 4368370/- and no Rs. 4388370/- as mentioned in the assessment order in page 2 para 4.2. The assessee company has attached the complete Balance Sheet for the year 2017-18 along with auditor report in the paper book at page no 89 to 150. Your kind attention is invited to page no. 139 of depreciation chart of the balance sheet and your honour will find that additions under the head building are Rs. 11430197/- and under the head electrical fittings are Rs. 3543567/-. However, AO has mentioned additions of Rs. 4388370/- in the building account and Rs. 9536788/- in the electrical fittings account in his assessment order. The copy of Return of Income along with computation chart

for the assessment year 2017-18 is also placed in the paper book at page no 151 to 155. In the computation chart, the depreciation chart is placed at page no 155 and your honour will find that additions under the head building are Rs. 11430197/- and under the head electrical fittings are Rs. 3543567/-. The contention taken by the AO in the assessment order is altogether wrong, hence the additions made under the wrong notion of law, may please be deleted.

3. The assessee has also placed in the paper book complete balance sheet of the financial year 2015-16 relevant to the assessment year 2016-17 which is placed in the paper book at page no 156 to 194. Your goodself will find that the figures mentioned in the assessment order on account of building and electrical fittings relates to assessment year 2016-17 and the same can be verified from the depreciation chart which is placed in the paper book at page no 182 of the assessment year 2016-17. The assessee has also placed in the paper book page no 195 to 199, Return of Income of the Assessment year 2016-17 and computation chart for the assessment year 2016-17 Your kind attention is also invited to the depreciation chart in the computation chart which is placed in paper book at page no 199, the additions on account of building and electrical fittings are mentioned in the depreciation chart relates to assessment year 2016-17 and not assessment year 2017-18 as assumed by the AO for the assessment year 2017-18. The additions on the basis of such figures deserve to be deleted since the facts of the case are not correct.

4. Your kind attention is also invited to the Judgement of Honorable Supreme Court in the case of Commissioner of Income Tax, Tamil Nadu, Madras vs. Madras Auto Service (P) Ltd. reported in 233 ITR 468. Your kind attention is invited to the second last para of the judgement which is reproduced as under:

"All these cases have looked upon expenditure which did bring about some kind of an enduring benefit to the company as a revenue expenditure when the expenditure did not bring into existence any capital asset for the company. The asset which was created belonged to somebody else and the company derived an enduring business advantage by expending the amount. In all these cases, the expense has been looked upon as having been made for the purpose of conducting the business of the assessee more profitably or more successfully. In the present case also, since the asset created by spending the said amounts did not belong to the assessee but the assessee got the business advantage of using modern premises at a low rent, thus saving considerable revenue expenditure for the next 39 years, both the Tribunal as well as the High Court have rightly come to the conclusion that the expenditure should be looked upon as revenue expenditure."

The judgement has been attached for your kind reference at paper book pages no 200 to 204.

5. Your kind attention is also invited to the judgement of Commissioner of Income Tax & ORS vs. Janakiram Mills Ltd & ORS of Honorable Madras High Court on this issue. The judgement is attached in the paper book at page no 205 to 231.

6. In view of the above submissions, it is requested and prayed to accept the contention of the assessee and delete the addition made by the AO under the wrong notion of law."

4.2 The Ld. CIT(A) further asked the assessee to file the details of premises used by the assessee and to give the breakup of the building wise construction / addition to the building and expenses incurred on electrical fitting account. In response the assessee submitted as under:

The written submissions are in continuation to our written submission given to your honour. The assessee company has the following factory buildings where production is being carried on by the company.

- (a) Noorwala*
- (b) Bhattian*
- (c) Manmohan Road*
- (d) New Kitchlu Nagar*
- (e) Washing Knit & Warehouse- Noorwala*

The complete details of buildings with address, gross block, depreciation and net balance has been given in Annexure - A' attached.

2. The complete details of Electric Fitting showing name and address of the factory, gross block, depreciation and net balance is also given in annexure 'A' and the same may please be referred.

Your kind attention is invited to Paper book Page No. 139 which is depreciation chart on 31-03-2017 annexed to Balance Sheet tallies with Annexure 'A' attached with the Written Submissions.

3. The complete details of factory building and shop taken on rent have also given in Annexure 'B'. Your goodself will find that there are two factory, buildings and one shop taken on rent. The rent agreement is placed in the paper book page no. 1 and 2. This factory is taken on rent from Mrs Sangeeta Jain, B- XXIV, 407 & 4707/1, Sunder Nagar, Ludhiana. The nominal rent of Rs.5000/- is being paid per month to Mrs. Sangeeta Jain The fire broke out in the premises of M/s Varinda International (P) Ltd. On 25/11/2016. The said building is also on rent and Mrs. Sangeeta Jain is the Owner. The complete details were given to A.O. on 13.12.2019 along with enclosures which is placed in the paper book page 10 to 88 being cuttings of different newspapers, Insurance policies, Intimation to Insurance Company, Insurance claim, Surveyor's report and claim finalization of Insurance Company.

The building of the company was adjacent and the fire broke out also in the premises of the company. Please note that this factory building is rented property. The factory building was got repaired and the complete details of building repairs are attached in the Paper Book Page No. 47 to 49. This expenditure is of revenue in nature.

Your kind attention is invited to the lease deed placed in the Paper Book Page No. 1 and 2 Clause No. 3 and 8. In Clause No. 8 it is clearly mentioned that

second party is responsible for any wear & tear maintenance and other repairs of the building, if due to any calamity or loss occurs on any part of rented premises, this shall be borne by the party of the second part.

In this case since the asset created by spending the said amounts did not belong to assessee but the assessee company got business advantage of using modern premises at low rent, thus saving considerable revenue expenditure.

The A.O. has tried to co-relate this rented property with the factory buildings at different locations which is against the facts and law, hence the expenditure of Rs.28,66,569/- may please be allowed as revenue expenditure."

4.3 The Ld. CIT(A) after considering the submissions of the assessee observed that the assessee had filed the details of building repairs account damaged by fire alongwith the major bills which revealed that the bills were in respect of cement bags, steel plates, paint, labour charges, tiles, enamel, electrical fittings, wires & cables, junction box, thermal rolls etc, and bill for construction charges for shed at ground floor including MS frame structure, area of shed 12/14 sq. ft, bill for construction charges included plaster, flooring, paint, MS doors & windows, stairs, labour charges for civil construction work, PVC bill & PVC Junction, copper wire conductors, panel lock, fitting charges which showed that the expenses were incurred for substantial construction and were of capital in nature. The Ld. CIT(A) discussed the provisions contained in section 30 & 31 of the Act and was of the view that after insertion of explanation w.e.f 01/04/2004 in section 31 of the Act the amount paid on account of current repairs shall not include any expenditure in nature of capital expenditure and that the clause in lease deed cannot override the specific legal provision. The Ld. CIT(A) sustained the disallowance made by the AO.

5. Now the assessee is in appeal.

6. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee was not the owner of the building which was taken on lease and there was a specific clause no. 3 in the lease deed dated 23/06/2016, which stated that the second party i.e.

assessee company shall have no right title, interest or any claim whatsoever on the premises of the First party, i.e the lesser, the property into consideration was exclusive property of the first party i.e the lesser and as per clause 8 of the lease deed, the second party i.e. the assessee will be responsible for any wear and tear, maintenance and other repairs of the building.

It was further stated that a fire took place in the adjacent building which destroyed the property of the assessee also, a reference was made to page nos. 14 to 18 of the assessee's compilation which are the copies of report in the various newspapers wherein fire due to short circuit in the factory has been reported. It was contended that there is no dispute that the fire took place in the assessee's premises and loss occurred due to fire, the assessee was not the owner of the building and the expenses under consideration were incurred for replacement of the existing asset which was destroyed due to fire, the details of the expenses had been furnished by the assessee, copy of which is placed at page no. 47 to 49 of the assessee's compilation. It was submitted that the incurring of expenditure was not doubted, however, the AO considered the expenses as capital in nature on the contrary the claim of the assessee is that no new asset came into existence rather the property which was destroyed by fire had been brought into running condition and that the AO wrongly treated the expenses as capital in nature and the Ld. CIT(A) was not justified in upholding the view taken by the AO.

7. In her rival submissions the Ld. Sr. DR reiterated the observations made by the authorities below in their respective orders and strongly supported the impugned order passed by the Ld. CIT(A).

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that the assessee was not the owner of the building in which fire took place rather he is

the lessee and the building premises was taken on lease, copy of the lease deed is placed at page no. 1 & 2 of the assessee's compilation, clauses 3, 4 & 8 of the said lease deed dt. 23/06/2016 read as under:

3. It is expressly argued and understood that the Second Part shall have no right, title, interest or any claim whatsoever on the premises of the First Party, Which is exclusively the property of the First Party.

4. The First Party will not be liable for any loss or damage to the goods due to theft or any other natural or unnatural causes.

8. Second Party will be responsible for any wear & tear, maintenance and other repairs of the building. If due to any calamity or loss occurs on any apt of rented premises the same is to be borne by second party.

From the aforesaid clauses, it is clear that the assessee was responsible for any wear and tear, maintenance and other repairs of the building. Since the building was destroyed by the fire, so, it was the responsibility of the assessee to bring the building in the same position, therefore, the expenses incurred were revenue in nature as far as the assessee was concerned and in case any claim is received from the insurance company the same is to be reduced from these expenses or in case it will be received on later date then it is to be shown as an income at the time of receipt. However for the year under consideration the assessee has incurred the expenses on account of repairs of building and electrical fittings to bring the old asset in the working condition and the other expenses which were capital in nature had already been capitalized as has been explained by the assessee to the Ld. CIT(A) vide reply dt. 13/12/2019 which has been incorporated at page no. 3 to 5 of the impugned order and has also been reproduced in former part of this order. In its explanation, it has been clarified by the assessee that the figures mentioned by the AO were wrong under the head building and electrical fittings, the said figures mentioned by the AO related to the preceding A.Y. 2016-17. In the present case it is noticed that the fire occurred in the building premises occupied by the assessee, was reported by various news papers, copies of which are placed at page no. 14 to

18 of the assessee's compilation. The assessee incurred various expenses for the repairs of the building and electrical fittings, the details of which are placed at page nos. 47 to 49 of the assessee's compilation. The total expenses incurred by the assessee were amounting to Rs. 33,54,993/- against which the insurance claim settled to be received was amounting to Rs. 4,88,424/- which had been reduced by the assessee from the total expenses and net amount of Rs. 28,66,569/- was claimed as revenue expenses. In the present case the assessee is not the owner of the building and it was its duty to maintain building in the same position in which it was occupied. The assessee incurred the expenses to bring the building in the same form and no new asset came into existence rather the old building and electrical fitting were brought into workable condition, therefore, the expenses incurred by the assessee were revenue in nature and not capital in nature. We, therefore, by considering the totality of the facts set aside the impugned order and direct the AO to treat the expenses under consideration as revenue in nature.

9. In the result, appeal of the assessee is allowed.

(Order pronounced in the open Court on 19.04.2022)

Sd/-
सुधांशु श्रीवास्तव
(SUDHANSHU SRIVASTAVA)
न्यायिक सदस्य/ JUDICIAL MEMBER
AG / rkk
Date:

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

1	Draft dictated	04/04/2022	Sr. P.S
2	Draft first placed before author	05/04/2022	Sr. P.S
3	Approved draft comes to Sr. PS/PS		
4	Final draft placed before author		
5	Order signed and pronounced on		
6	File sent to the Bench Clerk		
7	Date on which file goes to the AR		
8	Date on which file goes to the Head Clerk		
9	Date of dispatch of order		